Health Care and Retirement Corporation of America d/b/a Hampton House *and* District 1199P, Service Employees International Union, AFL–CIO, CLC. Case 4–CA–21893

June 29, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

On August 4, 1994, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent and the General Counsel filed exceptions with supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.

We agree with the judge that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally transferring work from the bargaining unit. Assuming arguendo that the positions to which the Respondent promoted the five licensed practical nurses (LPNs) were supervisory positions, the critical fact is that the LPNs continued to perform unit work. Thus, the effect of the Respondent's conduct was to transfer work out of the unit. The Respondent also unlawfully withheld information relevant to this issue from the Union. We also agree with the judge, however, that the Respondent's promotion of the five LPNs to the new ''nurse supervisor'' position did not violate Section 8(a)(3) and (1) of the Act.

We do not, however, agree with all aspects of the judge's analysis. In discussing the Respondent's unlawful unilateral conduct, the judge referred to the ''massive change of the scope of the unit'' occasioned by the Respondent's promotion of LPNs to LPN nurse supervisors. It is clear that the scope of the bargaining unit is a permissive subject of bargaining, regardless of whether the unit has previously been certified by the Board or voluntarily agreed on by the parties. Accordingly, once a specific job has been included within the scope of the bargaining unit by either Board action or the consent of the parties, the employer cannot remove or modify the position without first securing the consent of the union or the Board.[1] It is also clear that neither the decision to create new supervisory positions nor the selection of individuals to fill these positions is a mandatory subject of bargaining.[2] When an employer promotes an employee to a supervisory position and the new supervisor continues to perform former bargaining unit work, however, the work is removed from the bargaining unit. That is a change in the bargaining unit's terms and conditions of employment, giving rise to the employer's bargaining obligation under Section 8(d) of the Act.[3] In those circumstances, the employer must bargain with the union in good faith and may unilaterally change the bargaining unit's work only after a lawful impasse. That is the situation here. The Respondent promoted some of its LPNs to LPN nurse supervisors. These new ''supervisors'' continued to perform their former bargaining unit work. The removal of this work from the bargaining unit is a mandatory subject of bargaining. The Respondent did not give notice and bargain with the Union over the removal of the work from the bargaining unit and thereby failed to bargain concerning a mandatory subject of bargaining. Accordingly, the Respondent violated the Act as the judge found.

We also do not agree with all aspects of the judge's analysis with respect to his finding that the Respondent's promotion of LPNs to supervisory positions did not violate Section 8(a)(3) of the Act. The judge impliedly credited the Respondent's extensive testimony concerning the serious supervisory problems at the facility and the evolution of the decision to make supervisors of LPNs in order to obviate these problems.[4] The judge also found that the evidence failed to show that promotions to the supervisory positions were limited to those five LPNs who were subject to the Union's discharge request pursuant to the union-security clause in the contract. The evidence showed that LPNs who were not in arrears on their union dues were either promoted or chose to forego the promotion and remain in the bargaining unit. Under these circumstances, assuming arguendo that the General Counsel established a prima facie case that the Respondent made the promotions because the five LPNs had refused to pay their union dues, we find that the Respondent has met its burden under *Wright Line*[5] of rebutting the General Counsel's prima facie case by demonstrating that it would have promoted the five LPNs to the new supervisory nurse position even in the absence of the Union's request that the five LPNs be terminated because of their failure to comply with

[1] *Hill-Rom Co. v. NLRB*, 957 F.2d 454, 457 (7th Cir. 1992).

[2] *St. Louis Telephone Employees Credit Union*, 273 NLRB 625, 627–628 (1984).

[3] *Bridgeport & Port Jefferson Steamboat Co.*, 313 NLRB 542, 545 (1993), affd. mem. No. 94–4112 (Dec. 29, 1994).

[4] We note that the judge found that the Respondent accelerated the implementation of this decision when it received the Union's April 5, 1993 letter requesting that the Respondent terminate five LPNs because of their failure to pay dues. We also note that the General Counsel did not allege that this acceleration violated Sec. 8(a)(3) and (1) of the Act.

[5] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

the contractual union-security clause. The judge's discussion concerning the impact of the Respondent's conduct on union membership is therefore irrelevant and we do not rely on this aspect of his analysis. We affirm, however, the judge's dismissal of the allegation.[6]

Finally, we note that there are errors in the judge's Order and notice and we will correct them.[7]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Health Care and Retirement Corporation of America d/b/a Hampton House, Wilkes Barre, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively, on request, with the Union, as the exclusive bargaining representative of all employees in the bargaining unit described below, with respect to the rates of pay, wages, hours of employment, and other terms and conditions of employment. The appropriate collective bargaining unit is:

> All full-time and regular part-time licensed practical nurses (LPNs), maintenance employees, housekeeping employees, dietary employees, laundry employees, nurses' aides, and orderlies employed by Health Care and Retirement Corporation of America, doing business as Hampton House, but excluding guards and supervisors as defined by the Act.

(b) Unilaterally reclassifying employees (LPNs) into supervisory positions (LPN nurse supervisors).

(c) Failing and refusing to provide information to the Union which is reasonable and necessary to its performance as the exclusive bargaining representative of the employees in the appropriate collective-bargaining unit.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain, with the Union as the exclusive representative of the employees in the bargaining unit described above, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) If requested by the Union, revoke and cease utilizing the employee classification of LPN nurse supervisor, and return to the unit all LPNs who were promoted into this classification.

(c) If requested by the Union, revoke and cease giving effect to the changes in the terms and conditions of employment associated with the classification of LPN nurse supervisor that were implemented on or immediately after June 24, 1993; and in the event of such revocation make the employees whole, with interest, for any losses they may have suffered as a result of these changes.

(d) Provide to the Union, to the extent that it has not already done so, all information requested by the Union in its letter dated July 9, 1993.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Wilkes Barre, Pennsylvania, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by

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[6] The Respondent alleges, in its brief in response to the General Counsel's exceptions, that the LPN nurse supervisors are statutory supervisors. The General Counsel did not allege that the supervisory classifications were a sham and the judge made no specific finding on this issue. Accordingly, we do not reach the issue whether the disputed employees were, in fact, statutory supervisors.

[7] We have conformed the Order and notice to precedent. *Luther Manor Nursing Home*, 270 NLRB 949, 950 (1984). See also *Children's Hospital*, 312 NLRB 920, 931–932 (1993). The requirement that the Respondent revoke the unilateral reclassification of the five promoted LPNs if the Union so requests tracks the language of the analogous portion of the *Luther Manor* order, and is in keeping with our usual conditional status quo ante remedy for unilateral changes. *Children's Hospital*, supra at 931 and cases there cited. Unlike Member Cohen, we would not overrule the remedial aspect of *Luther Manor*. We note that nothing in *Luther Manor* or in our decision here would preclude the Respondent, after it has reinstated the status quo ante, from again creating LPN supervisory classifications; but in doing so it must first bargain with the Union over any proposed removal of work from the bargaining unit entailed by the establishment of such positions.

Member Cohen does not agree with his colleagues that the remedy should include a provision revoking the classification of LPN supervisors and returning the LPNs in that classification to the unit. In his view, the violation is the transfer of unit work out of the unit. Thus, the remedy is to return that work to the unit. If the classification is indeed a supervisory one, the Respondent is free to retain it and to fill it with whomever it wishes.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargaining collectively, on request, with District 1199P, Service Employees International Union, AFL–CIO, CLC (Union), as the exclusive bargaining representative of our employees in the bargaining unit, described below, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. The bargaining unit is:

> All full-time and regular part-time licensed practical nurses (LPNs), maintenance employees, housekeeping employees, dietary employees, laundry employees, nurses aides, and orderlies employed by Health Care and Retirement Corporation of America, doing business as Hampton House, but excluding guards and supervisors as defined by the Act.

WE WILL NOT unilaterally reclassify employees (LPNs) into supervisory positions (LPN nurse supervisors).

WE WILL NOT fail and refuse to provide information to the Union which is reasonable and necessary to its performance as the exclusive bargaining representative of the employees in the appropriate collective-bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union, as the exclusive bargaining representative of all employees in the bargaining unit described above, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL, if requested by the Union, revoke and cease utilizing the employee classification of LPN nurse supervisor, and return to the unit all LPNs who were promoted into, this classification.

WE WILL, if requested by the Union, revoke and cease giving effect to any of the changes in the terms and conditions of employment of our LPNs which were implemented on or immediately after June 24, 1993, and, in the event of such revocation, WE WILL make the employees whole, with interest, for any losses they may have suffered as a result of those changes.

WE WILL provide to the Union, to the extent that we have not already done so, all information requested by the Union in its letter dated July 9, 1993.

HEALTH CARE AND RETIREMENT CORPORATION OF AMERICA D/B/A HAMPTON HOUSE

Timothy J. Brown, Esq., for the General Counsel.
Margaret J. Lockhart, Esq. (Cooper, Straub, Walinski & Cramer), of Toledo, Ohio, for the Respondent.
Betsy Manzione, of Dalton, Pennsylvania, Organizer of the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. On February 9, 1993, Charging Party District 1199P, Service Employees International Union, AFL–CIO, CLC (Union), entered into a collective-bargaining agreement with Respondent Health Care and Retirement Corporation of America, doing business as Hampton House.[1] The agreement covered, in part, licensed practical nurses (LPNs) and contained a union-security clause requiring employees to pay union dues and initiation fees. On June 25, shortly after the Union demanded that certain LPNs be terminated for not paying their union dues, the Respondent promoted them to a new position of licensed practical nurse supervisors (LPN supervisors) and insisted that they were no longer in the collective-bargaining unit. The complaint alleges that, by doing so, the Respondent violated Section 8(a)(3), (5), and (1) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. The Respondent denied that it did.[2]

Jurisdiction is conceded. The Respondent, an Ohio corporation, is engaged in the operation of nursing homes throughout the United States, including one known as Hampton House in Wilkes Barre, Pennsylvania. During 1992 the Respondent derived gross revenues in excess of $100,000 and purchased and received at Hampton House goods valued in excess of $50,000 from points outside of Pennsylvania. I conclude, as the Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act. The Union is the exclusive bargaining representative of not only the Respondent's LPNs but also its maintenance, housekeeping, dietary, and laundry employees, and nurses aides and orderlies.

[1] The agreement was effective on January 31 and runs for 3 years.

[2] The relevant docket entries are as follows: The Union filed its charge on July 19 and amended it on August 30 and October 1. The complaint issued on September 30 and was amended on April 18, 1994. The hearing was held in Nanticoke, Pennsylvania, on April 20–21, 1994.

I conclude, as the Respondent admits, that the unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and that the Union is a labor organization within the meaning of Section 2(5).

On April 5, 1993,[3] after the execution of the agreement, Betsy Manzione, the Union's organizer, wrote to Louise Forsha, the Respondent's administrator, requesting that the Respondent terminate five LPNs, Zelda Holley, June Verry, Annetta Rudeski, Deborah Eyerman, and Denise Tranell, by June 4 because they had ''failed to sign Union Membership and Check-Off authorization cards and are in default for union dues.'' The Union was willing to waive its request if the LPNs signed checkoff authorizations, which it would deem ''as a promise to pay back dues.'' Forsha replied on May 6 that she did not believe that Manzione's letter constituted a valid demand. She was legally correct. Manzione had the right to ask, under the agreement's union security clause, for their termination if they failed to pay their union dues, but she had no right to demand that they sign checkoff authorizations.

Manzione persisted. On June 10, she filed a grievance for the same relief and met twice later that month with Forsha, who advised her on June 25:

> Following review by H.C.R.'s Legal Counsel, we agree to honor the Union's demand. Effective June 24, 1993, the above listed individuals [the five LPNs] have been terminated from the bargaining unit.
>
> I trust our response meets with your satisfaction.

Manzione was not satisfied with the response because it did not state that the LPNs had been terminated, but only that they had been terminated from the unit. Manzione tried to find out what Forsha meant, and Forsha explained that the LPNs were still employees, but were no longer in the bargaining unit. Instead, the Respondent had promoted them to the new position of LPN supervisors. Manzione asked what work and duties they now performed, and Forsha replied that they were involved in hiring and discipline, they could agree to overtime, and they directed the work of the nurses aides. Their rates of pay had been increased (by 25 cents per hour) and the benefits of the contract were no longer applicable to them.

On July 9, Manzione submitted to arbitration the grievance that the Respondent had violated the union-security provision. In addition, she wanted certain information that she had asked for in her telephone conversation of July 8, a request that she renewed by letter dated July 9, as follows:

> 1. Names, addresses and telephone numbers of those LPNs reclassified as nurse supervisors.
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> 2. Current job titles and job descriptions of the above named LPNs.
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> 3. Current rate of pay and description of the benefit package of those LPNs reclassified as nurse supervisors.
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> 4. The names of LPNs currently within the LPN job classification.
>
> 5. The current LPN job description.

[3] All dates refer to 1993, unless otherwise stated.

On July 16, Manzione withdrew her demand for arbitration ''until the issue of LPN reclassification to nurse supervisor and their status in the bargaining unit is resolved.'' On July 21, Forsha replied to the demand for information, giving only the names of the current LPNs (Roseann Hoffman, Sharon Williams, and Helen Blockus, all of whom were members of the Union at that time) and a copy of the current LPN job description. On July 23, Manzione filed a new grievance that she wanted to arbitrate, to wit, that the Respondent had violated the recognition provision of the collective-bargaining agreement in that it had eroded the bargaining unit by reclassifying the LPNs. She sought the following relief: ''Negotiate with the Union over changes in wages, benefits and working conditions for bargaining unit employees.'' The grievance is still pending, and Forsha neither supplied the other information that Manzione had requested nor did she explain her reasons. Only at the hearing in this unfair labor practice proceeding did she contend that the information pertained to supervisors, who were not part of the bargaining unit, and the information was confidential. On the other hand, Manzione testified that she needed the information because the Union was responsible for negotiating about any changes in the terms and conditions of the employees it represented and she wanted to know what changes were made and who was affected, all for the purpose of filing a grievance or an unfair labor practice charge.

The complaint alleges three violations: first, that the Respondent never bargained about the shift of the LPNs to the new position; second, that the Respondent transferred the LPNs to reward them for their refusal to support the Union; and, third, that the Respondent failed to supply the requested information. There is no dispute that the Respondent never bargained with the Union about the change of the LPNs' positions and functions. The Respondent contends that it had a right to do so because the agreement's management rights clause expressly permitted it to promote employees. However, its right to promote employees must be distinguished from its right to effectively abolish jobs performed by unit employees. As the Board recognized in *Lutheran Home*, 264 NLRB 525 fn. 1 (1982):

> [W]hen an employer promotes employees out of the unit into supervisory positions, the Board draws a sharp distinction based on whether the bargaining unit thereby suffers a significant loss of work. Where an employer wishes to select a unit employee to be a supervisor, and the unit will not lose that employee's work, the Board does not find that the employer has a duty to bargain over the selection. *KONO-TV-Mission Telecasting Corporation*, 163 NLRB 1005, 1008 (1967). However, where an employer wishes to create a new supervisory position and the several unit employees whom the employer wishes to place in the new supervisory jobs will continue to perform duties which they had performed as unit employees, the unit will as here suffer an abolition of jobs. The loss of work is a change in the terms or conditions of employment which under Sec. 8(d) of the Act the employer is obligated to bargain over with the union. . . . *Central Cartage, Inc.*, 236 NLRB 1232, 1258 (1978); *Kendall College*, 228 NLRB 1083, 1088 (1977); *Tesoro Petroleum Corp.*, 192 NLRB 354, 359 (1971).

Here, Respondent's defense to the 8(a)(3) allegation, as shown below, was premised on its plans, since 1990, to employ new supervisors. By its own admission, it knew well in advance of negotiations that it intended to reclassify LPNs. Yet, it not only failed to mention the change to the Union (although it proposed that its LPNs be placed in a separate unit) but also went through extended contract negotiations in the beginning of 1993 and even negotiated a wage increase for the very position that it now alleges it planned to abolish. The management rights clause gives the Respondent no comfort. ''The waiver of a statutory right will not be inferred from general contractual provisions. Rather, such waivers must be clear and unmistakable.'' *Dubuque Packing Co.*, 303 NLRB 386, 397 (1991), modified in other respects sub nom. *Food & Commercial Workers Local 150-A v. NLRB*, 1 F.3d 24 (D.C. Cir. 1993), citing *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). There is nothing in the clause so clear. The Respondent contends that it had the right to ''assign work duties in accordance with its determination of the needs of the respective job.'' That is vastly different from removing employees from the unit, requiring them to perform the same functions as before, and investing them with supervisory duties. The Respondent also points to its right to contract out work, but that is not what it did here, permitting its LPNs to do exactly the tasks they performed before, but with the possible exercise of some supervisory duties, thus pulling them out of the unit. That obviously reduces the scope of the unit, although the same people are performing the same work. The Respondent must bargain about that kind of massive change of the scope of the unit. Its failure to do so violated Section 8(a)(5) of the Act.

The Respondent admitted that it would not have established the supervisory positions and promoted the LPNs as early as it did had it not been for the Union's request that the LPNs pay their union dues or be terminated; but the Respondent would have created the new position, probably later in the year. In 1990 an annual survey by the authorities in Massachusetts revealed numerous deficiencies in the operation of the home. These entailed the failure to treat the residents with the care to which they were entitled, and part of the problem was placed on the lack of adequate supervision of the nurses aides. The parent of Hampton House was dissatisfied with the overall administration of the home, and shortly replaced the then administrator with Forsha. In addition, there was also dissatisfaction with the director of nursing, and Robin Palkovic, originally hired as assessment coordinator, was named 6 weeks after her hire as director of nursing. She soon learned that she was being besieged with all sorts of problems from the staff, caused by the fact that she was the only supervisor. The registered nurses came to her to solve their problems, as did the LPNs and the nurses aides. Indeed, Palkovic was the sole supervisor of all the employees in the entire facility, and she was responsible for the smooth operation even if the home ran out of sheets or orange juice or electric power. No nurses aide would seek help from a licensed practical nurse or registered nurse, and Palkovic was being called at home throughout the night. Efforts to teach the nurses aides to seek help from their LPNs or registered nurses was to no avail.

In an attempt to regain some sort of sanity, Palkovic and the administrator received permission to hire a house supervisor, who would be responsible for the entire operation of the home during the 3–11:30 p.m. shift. Although this did some good, Palkovic was still unable to receive relief from all the business she had to conduct and she was still under stress. In 1992 Respondent's parent corporation introduced a new program that it offered, a training program to teach supervisory skills to its LPNs and registered nurses. It was agreed that the home would offer that program, which entailed handing over various supervisory functions and upgrading the employees to supervisory status, with an increase in pay. The home had one employee who took the program, and she was to train the others. However, she quit shortly before she was to offer the program in 1992, and the program was delayed. Finally, it was agreed that the program would be put into place in the spring 1993; but that timetable was not met, either. First, the administration was involved in negotiations with the Union for a new contract, and those negotiations resulted in higher costs than the home had anticipated. Additionally, the home had incurred various costs in connection with the Union's threat to strike. Finally, as a result of the Union's threat, the home stopped admitting new residents on March 1, 1993, resulting in less income. The home found itself with insufficient funds to institute the program and delayed it, with the hopes of receiving enough revenues to make up for the losses incurred at the beginning of the year.

Then came Manzione's letters, however, and with them the concern of the LPNs that they would have to quit because they did not want to become members of the Union. The Respondent decided that it would advance the date for the training sessions, reclassify the LPNs, and pull them out of the unit. So the advancement of the date was directly attributable to Manzione's letters demanding compliance with the contract's union-security clause. The Respondent originally offered the promotion to those who had refused to pay their dues, but promoted anyone who asked, union member or not. Thus, the Respondent did not encourage or discourage union membership, especially because the Union's attempted enforcement of the union security clause could not require the LPNs to join the Union. I conclude, therefore, that the Respondent did not violate Section 8(a)(3) of the Act. *Lutheran Home*, supra.

The final violation alleged in the complaint is the failure of the Respondent to supply the information requested by the Union. An employer is obliged to furnish, on request, information needed by the bargaining representative for the proper performance of its statutory duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Here, the Union was concerned with the massive removal of bargaining unit work to individuals whom the Union had represented and who were formerly covered by the collective-bargaining agreement. Almost all of the information was supplied by the Respondent during the hearing, and the reason that the Respondent supplied it was that it was relevant to the very issues that the Union claimed. The information went to the heart of the complaint's allegations, the very same that Manzione was trying to learn about to determine whether to proceed to arbitration. For this reason alone, the Respondent violated Section 8(a)(5) of the Act. The Respondent's contention that the allegation must be dismissed because it is moot is untenable, because it violated the Act. The normal Board relief of a cease-and-desist order and notice posting is appropriate.

The unfair labor practices found herein, occurring in connection with the Respondent's business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent unlawfully and unilaterally changed the terms and conditions of employment of its employees, I shall order the Respondent, on request of the Union, to rescind the position of LPN supervisors established in 1993, accord recognition to the Union as the collective-bargaining representative of the former occupants of that position who were in the bargaining unit, and restore all terms and conditions of employment to the status quo before the unilateral changes, to the extent that such were detrimental to its employees. Although no employee may have suffered economic loss by reason of the Respondent's action, I shall also order the Respondent to make all unit employees whole for any loss of wages and benefits they may have suffered as a result of the unlawful changes. Backpay shall be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). To the extent, if any, that the LPNs lost coverage for various benefits, I shall order the Respondent to reimburse them for any expenses incurred as a result of its failure to permit them coverage, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Finally, I shall order the Respondent to turn over all the documents that the Union requested, to the extent that the Respondent has not already done so.

[Recommended Order omitted from publication.]